

ZONING BOARD OF APPEALS MINUTES

February 11, 2014 – Regular Meeting
Delta Township Administration Building

I CALL TO ORDER

Vice Chairman Barnhart called the meeting to order at 7:00 p.m.

II PLEDGE OF ALLEGIANCE

III ROLL CALL

Members Present: Arking, Barnhart, Newman, Parr, and Hicks (arrived at 7:10 p.m.)

Members Absent: Laforet, and Reed

Others Present: Chris Gruba, Assistant Planner.

IV SET AND ADJUST AGENDA:

Mr. Barnhart asked if there were any changes to be made to the agenda.

Mr. Gruba said there were no changes.

V APPROVAL OF MINUTES

1. **MOTION BY PARR, SECONDED BY NEWMAN, THAT THE AUGUST 13, 2013 ZONING BOARD OF APPEALS MINUTES BE APPROVED AS SUBMITTED. VOICE VOTE. CARRIED 4-0.**

VI OLD BUSINESS - None

VII NEW BUSINESS

1. **CASE NO. V-14-1-26:** Mr. Ed Bennett, requesting a greenbelt landscape variance and a buffer zone landscape variance for the proposed D & K Truck Company at 3020 Snow Road per Sections 20.7.0 and 20.30 (A)(2) of the Zoning Ordinance.

Mr. Gruba said the first variance request was for relief from the greenbelt landscaping

ZONING BOARD OF APPEALS REGULAR MEETING OF FEBRUARY 11, 2014 P. 2

requirement along Lansing Road, Old Lansing Road, and Snow Road and the second variance request pertained to relief from the buffer zone landscaping requirement along the west property line between Lansing Road and Old Lansing Road. Mr. Gruba reviewed the surrounding land uses and their zoning classifications and the fact that the variance requests only applied to the number of shrubs that were required and that the applicant complied with the required number of trees. Mr. Gruba noted that there was an existing fence around the entire site that was located on the property line. He indicated that the Zoning Ordinance required that any landscaping within the buffer strip be installed between the fence and the road, however, since the fence was located on the property line, the fence would have to be relocated further back from the road. Mr. Gruba pointed out that the Zoning Board of Appeals could deny the variance request, thereby requiring the applicant to plant new shrubs and move the existing fence. Or, the ZBA could require the applicant to plant new shrubs but would be allowed to keep the existing fence in place. Or, the ZBA could grant the variance as requested so that the applicant wouldn't have to plant any new shrubs.

Mr. Hicks asked whether staff had a survey that illustrated where the fence was located relative to the property line.

Mr. Gruba noted that the site plan illustrated the fence and the location of the property line.

Ed Reed, Delta Township's Economic Development Coordinator, addressed the Board by noting that on April 12, 2012, the Township was contacted by D & K Truck Company who was interested in the former Starlite Drive-in site. He noted that D & K Truck Company was presently located in the City of Lansing and were in a situation where they couldn't expand their operation which was why they were interested in locating in Delta where they would be in close proximity to two of their largest customers.

Mr. Barnhart questioned if D & K Truck Company manufactured trucks on their site.

Mr. Reed stated that D & K Truck consisted of truck sales and service similar to what a car dealership provided.

Jeff Kyes, Kyes Incorporated, 2106 Haslett Road, Haslett, Michigan, said he was present this evening to represent D & K Truck Company and the owner, Ed Bennett. Mr. Kyes said very seldom did he work on projects that didn't max out a piece of property which was what they were actually doing on the subject parcel compared to what a normal project would be. Mr. Kyes said when they started preparing the site plan, they were setback 40 feet from Lansing Road at the closest point and that a majority of the frontage consisted of grass area that would not be disturbed. He noted that they intended to install shrubs within a required 10 foot buffer strip along Lansing Road, as well as additional trees that were needed to meet the landscaping requirements. Mr. Kyes said when there was 40 feet of area instead of 10 feet and that the

ZONING BOARD OF APPEALS REGULAR MEETING OF FEBRUARY 11, 2014 P. 3

shrubs were required to be 24 to 36 inches tall which would not provide much of a barrier to shield headlight glare. Mr. Kyes felt 40 feet of frontage, with natural vegetation, was adequate without having to install shrubs every 10 feet.

Mr. Kyes proceeded to review the four basic conditions for granting a variance by noting that in regards to Basic Condition #1, The variance shall not be contrary to the public interest or to the intent and general purpose of the Zoning Ordinance, he felt there was an undue hardship of having to go into an area that would not be disturbed, or maintained, and remove mature vegetation in order to plant new shrubs in the same area. He didn't feel it was economically wise and by disturbing the area, they may have to remove existing trees which he felt was a hardship. Mr. Kyes addressed Basic Condition #2; the variance shall not permit the establishment within a district of any use which is not permitted by right or special use permit, by noting that the proposed use was permitted in the B2 zoning district with a special land use permit. He addressed Basic Condition #3, where absent a variance, public health, safety and welfare would be negatively affected, by noting that the natural green belt far exceeded the required 10 foot wide greenbelt and therefore, would not cause an adverse effect on adjacent property owners. Mr. Kyes felt the variance met Basic Condition #4, the variance shall relate only to property described in the application of the variance, due to the fact that the variance was only being requested for the subject parcel.

Mr. Kyes felt the variance met Special Condition #1, where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this ordinance. These hardships or difficulties shall not be deemed solely economic, but shall be evaluated in terms of the use of a particular parcel of land. Mr. Kyes felt it was a hardship to be required to go to the expense of removing existing vegetation and then plant new shrubs that would not be maintained due to the large area of green space. Mr. Kyes pointed out that there was a 40 foot setback from Lansing Road and a 20 foot setback from Old Lansing Road that would be graded and planted with grass resulting in a 100 foot wide buffer between their parking lot and Old Lansing Road. He said they were setback even further from Snow Road which was heavily wooded. Mr. Kyes said to be required to plant shrubs underneath trees in areas that would not be maintained was a hardship and unnecessary for the project.

Mr. Barnhart asked how the property would be identified by customers.

Mr. Kyes referred to the site plan which illustrated a 40 foot wide area of green space along Lansing Road between the display area and Snow Road that would remain in its natural state. Mr. Kyes noted that their display area would be 10 feet away from the fence which was where shrubs would be installed at the closest point to any property line and that a pylon sign would be located in the middle of the vehicle display area. Mr. Kyes pointed out that the operation was very destination-oriented and that limited signage was needed. He noted that they would meet the ordinance requirements for the number of trees.

ZONING BOARD OF APPEALS REGULAR MEETING OF FEBRUARY 11, 2014 P. 4

Ms. Parr questioned if the fencing around the periphery of the property would be relocated.

Mr. Kyes said fencing was not required, but since the fencing already existed, they would like it to remain where it was.

Mr. Hicks said the difficulty he had with this evening's request was that the Zoning Board of Appeals had denied these types of requests in the past that were located within the industrial tract. Mr. Hicks questioned whether consideration had been given to obtaining an interpretation from the Zoning Administrator relative to the shrubbery being counted so that a variance wouldn't be necessary. Mr. Hicks said due to the fact that there was a significant amount of growth that already existed on the subject parcel, he questioned if it wouldn't be the Zoning Administrator's interpretation that credit be given for what already existed.

Mr. Gruba noted that Mr. Graham was aware of the variance requests and that Mr. Graham was not waiving any of the landscaping requirements.

Mr. Barnhart inquired about the fence.

Mr. Gruba stated that fencing was not required, but landscaping could not be obscured by the fence.

Mr. Hicks said the reason why he had raised the question about an interpretation was due to the fact that the Zoning Board of Appeals routinely reviewed these types of requests and that the goal of installing landscaping was not only to screen or buffer headlight glare, but to bring a piece of property into conformity relative to curb appeal. Mr. Hicks said he was always cognizant of treating similar cases the same, as well being mindful of a precedence being set. Mr. Hicks said the reason why he inquired about an interpretation was due to the existing vegetation and the fact that it wasn't an empty piece of property. Mr. Hicks felt there was some legitimacy to the argument of tearing out existing vegetation to install new, but he didn't feel this would be the last time the Zoning Board of Appeals would hear this type of request. Mr. Hicks said he would like to hear how the other Board members felt about this issue because there was some validity to the argument to replacing existing vegetation, but at the same time, he was very cognizant of the fact that landscaping was the one thing people tried to avoid if they could.

Mr. Kyes felt the hardship in this case was the removal and replacement of existing vegetation. He said the trade off was not only leaving the existing vegetation in place, but they were providing another 30 feet along Lansing Road and another 90 feet along Old Lansing Road that would remain natural and approximately 200 to 300 feet of green space along Snow Road. Mr. Kyes pointed out that they were required to provide a 10 foot wide greenbelt and that the existing evergreen trees on the site provided sufficient screening, but they couldn't be treated as

ZONING BOARD OF APPEALS REGULAR MEETING OF FEBRUARY 11, 2014 P. 5

a shrub because they were a conifer tree. Mr. Kyes not only felt it wasn't necessary to remove the existing vegetation within the 10 foot wide greenbelt and plant shrubs, but he noted that they were providing another 30 feet of area that would remain in its natural state.

Mr. Hicks pointed out that a variance ran with the land regardless of who owned the property and the use and what might be a wide buffer today, may not be that way in the future.

Mr. Kyes felt any modifications made to the property would require an amended special land use permit.

Mr. Hicks said that was correct, but a special land use permit was separate and distinct from the variance approach and that a special land use permit was granted by the Township Board and a variance was granted by the Zoning Board of Appeals, neither of which had oversight over the other.

Mr. Arking questioned if it was correct that the required trees and shrubs were required to be located on the road side of the fence.

Mr. Gruba noted that existing landscaping located on the interior side of the fence would be considered as part of the required landscaping.

Mr. Arking said as he understood it, the ordinance required new plantings to be installed on the exterior side of the fence and he wanted to make sure the area on the interior of the fence could be used.

Mr. Gruba said the Zoning Board of Appeals could grant a variance for the shrubbery, but that the fence would not have to be moved.

Ms. Parr felt this was a unique piece of property because there were roads on all four sides. She said due to the fact that Old Lansing Road could be considered an historical road, she would like to see shrubbery planted in that location, but she would be in favor of granting a shrub variance for Lansing Road and Snow Road.

Mr. Kyes noted that they wanted to move a few of the existing conifer trees that would be disturbed during construction, but he would like the chance to work with what they had on site rather than planting shrubbery. Mr. Kyes said the topography of the site on the interior side of the fence was three feet lower which would make the installing of shrubbery difficult in a 10 foot wide buffer strip without having to change all of the grades so you could them. Mr. Kyes noted that they intended to relocate a few of the conifer trees that already existed on site, as well as plant five six foot high conifer trees in order to buffer the residential house located at 5256 Old Lansing Road.

ZONING BOARD OF APPEALS REGULAR MEETING OF FEBRUARY 11, 2014 P. 6

Dan VanAcker, 4149 River Cove, said he also owned the small garage located at 3450 Snow Road. Mr. VanAcker felt Mr. Hicks and Ms. Parr brought up some very important characteristics of the area and the fact that Old Lansing Road tied in with the Anderson Nature Preserve and Woldumar Nature Center. Mr. VanAcker felt the existing foliage had much more value than installing 10 foot wide berms with shrubbery that the deer would destroy. Mr. VanAcker said in addition to the buffer that the applicant was required to provide, he would like to see the existing vegetation remain around the Reusch residence to provide additional buffering. He said the characteristics of Old Lansing Road was very important to the neighboring community and that replacing the existing landscaping with new landscaping would not fit in with the area. Mr. VanAcker also felt it was unappealing from an economic point of view to remove existing vegetation to install new. He understood that the Zoning Board of Appeals was protecting the community and the citizens of Delta Township and that people may take advantage of the variance process, but he felt the characteristics the subject parcel had to offer and the history of the area was very important and shouldn't be disturbed anymore than it had to be. Mr. VanAcker felt D & K Trucking was a good use for the property and that it was unrealistic to think the property would stay vacant. He hoped everyone could come to an agreement that made sense. Mr. VanAcker said another concern of the neighbors was light pollution and that he asked that this be considered during site plan review. Mr. VanAcker said he was a member of the Woldumar Nature Center and it was important that the area be kept aesthetically pleasing for future generations.

Mr. Kyes noted that they would be going before the Planning Commission for site plan review on February 24th at which time a lighting plan would be submitted. He noted that they intended to meet the standards contained in the Township's Zoning Ordinance.

Chris Reusch, 5256 Old Lansing Road, said he agreed with what had already been said this evening about maintaining the existing vegetation and that the natural vegetation was much better than installing new landscaping. Mr. Reusch brought the Board's attention to the fact that there were several dead trees on the subject parcel along the fence line that he would like to see removed. He felt the proposed operation was a good use for the property, but the residents were concerned about light and noise pollution and he asked that every attempt be made to lessen those effects on the community.

Mr. Barnhart inquired about PA systems that were typically associated with car dealerships.

Mr. Reusch said he could remember at time when he was able to hear the PA system at the Purina processing plant located on the north side of the railroad tracks until they turned the volume down. Mr. Reusch didn't feel it made sense to remove a perfectly good fence just so shrubbery could be installed on one side versus the other. Mr. Reusch noted that he had experienced runoff from the subject parcel during heavy rains and he asked if something could

ZONING BOARD OF APPEALS REGULAR MEETING OF FEBRUARY 11, 2014 P. 7

be done to direct water runoff into the ditch along Old Lansing Road rather than onto his property.

Mr. Kyes said they only counted live trees when they conducted a tree survey of the property, as well as species of trees that were allowed per the standards of the Zoning Ordinance. Mr. Kyes noted that they considered removing several Elm trees that existed on the property due to disease, but they decided to remove the trees as they died.

Brian True, 4725 Cooper, Royal Oak, Michigan, noted that he was present this evening on behalf of the applicant, Ed Bennett, who was ill this evening. Mr. True said he had worked with the applicant on this project since its inception and that it was Mr. Bennett's desire to minimize the impact of the development as much as possible. Mr. True said the project was an expensive endeavor for Mr. Bennett, but he was also trying to meet everybody's needs. He noted that they originally only needed less than 10 acres, but Mr. Bennett liked the natural setting of the parcel and he would like to preserve as many of the existing trees as possible and would make sure that the dead trees were removed. Mr. True noted that the truck operation would be a beautiful facility and that Mr. Bennett wanted his business to have curb appeal and for his neighbors to be happy.

Mr. True felt the existing fence was a win/win situation for everyone and that having a fence already in place was a huge savings for the applicant, as well as providing security and a natural buffer for the neighbors. Mr. True said it was also felt that the existing vegetation on the property would create a natural buffer that would help obscure the facility. Mr. True noted that they were moving fairly quickly on the project and that it was their desire to be moved into the new facility before next winter. He noted that they would make sure that lighting on the site was not obtrusive to the neighbors and that there wouldn't be a need for trucks to be left running outside for long periods of time. Mr. True said as earlier noted, an outdoor PA system would not be needed due to the fact that the truck facility was a destination location rather than an operation where customers spontaneously visited the site. Mr. True indicated that there would be major road improvements made that would improve traffic circulation in the area and he felt Mr. Bennett had submitted a well done project that he hoped the Board would consider this evening.

MOTION BY PARR, SECONDED BY HICKS, THAT THE PUBLIC HEARING BE CLOSED. VOICE VOTE. CARRIED 5-0.

Mr. Hicks said he was reluctant to grant a variance dispensing with all vegetation requirements as it related to shrubbery and that he would favor obtaining an interpretation from the Zoning Administrator.

Ms. Parr noted that she would like to have preserve the existing vegetation on site but that

landscaping should be added to Old Lansing Road because it was a bit sparse.

Mr. Arking said he liked the project, but he wasn't ready to set aside the whole ordinance based on the facts he had before him this evening. He questioned what more could be done to meet the requirements of the Zoning Ordinance. Mr. Arking noted that the question he had was whether vines of ivy on the fence could achieve a lot of the objectives of the ordinance for shrubbery and whether there was an opportunity utilize the interior of the fence for plantings that could not be accommodate on the exterior of the fence. Mr. Arking said he also wasn't sure he understood the applicant's reasoning behind moving trees around to balance out shrubbery from one area to the other.

Mr. Barnhart said the applicant met the landscaping requirements for the number of trees and that the variance request was for number of shrubs.

Mr. Arking felt replacing existing vegetation with new was unnecessary, but the ordinance attempted to provide a visual pleasing green buffer between this type of land use and the adjacent properties and he wasn't sure that all avenues had been explored to do that. He said the fence itself was an obvious venue for plantings and he wasn't sure why that wasn't being considered.

Mr. Kyes requested that the Zoning Board of Appeals table their requests this evening. He said they would be required to install 500 shrubs at \$30.00 a piece which could amount to \$15,000. Mr. Kyes noted that this wasn't a major cost to the project, but it didn't make sense and that he didn't feel it was conveying this adequately to the Board.

Mr. Hicks felt part of the issue was whether landscaping had to be located on the exterior of the fence.

Mr. Kyes said the site plan illustrated the required number of shrubs per the standards of the Zoning Ordinance. He felt they could still go through site plan review without a variance and come back at some point and request a variance. He noted that it would be very difficult to determine what was on the site right now due to the snow.

Mr. Kyes said the variances were not something that effected the construction of the project and that they could come back at a later date and apply for a variance when they could better evaluate the property in the spring.

MOTION BY HICKS, SECONDED BY NEWMAN, THAT VARIANCE REQUEST V-14-1-26 BE TABLED INDEFINATELY UNTIL SUCH TIME AS THE APPLICANT WAS READY TO BRING THE REQUEST BACK BEFORE THE ZONING BOARD OF APPEALS. VOICE VOTE. CARRIED 5-0.

ZONING BOARD OF APPEALS REGULAR MEETING OF FEBRUARY 11, 2014 P. 9

- VII OTHER BUSINESS – None
- IX STAFF COMMENTS - None
- X BOARD COMMENTS
- XI ADJOURNMENT

**MOTION BY PARR, SECONDED BY HICKS, THAT THE MEETING BE
ADJOURNED. VOICE VOTE. CARRIED 5-0.**

Mr. Barnhart adjourned the meeting at 7:12 p.m.

DELTA CHARTER TOWNSHIP
Mary Clark, Secretary to the Zoning Board of Appeals

Minutes prepared by Anne Swink